

ENTERED

May 02, 2019

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

ALPHONSO SMITH, §
TDCJ # 01952701, §
§
Petitioner, §
VS. § CIVIL ACTION NO. 3:16-CV-174
§
LORIE DAVIS, §
§
Respondent. §

ORDER

On March 28, 2019, the Court dismissed the habeas petition filed by Alphonso Smith. Petitioner has filed an appeal (Dkt. 45) and several motions are pending in this Court. The Court now **ORDERS** as follows:

1. Petitioner filed a timely motion to alter or amend judgment (Dkt 44). Federal Rule of Civil Procedure 59(e) serves the narrow purpose of allowing a party to bring manifest errors or newly discovered evidence to the Court's attention. *See In re Rodriguez*, 695 F.3d 360, 371 (5th Cir. 2012); *Ross v. Marshall*, 426 F.3d 745, 763 (5th Cir. 2005). A motion for reconsideration "is not the proper vehicle for rehashing evidence, legal theories, or arguments that could have been offered or raised before the entry of judgment," and an "unexcused failure" to present available evidence or arguments before judgment "provides a valid basis for denying a subsequent motion for reconsideration." *Templet v. HydroChem Inc.*, 367 F.3d 473, 479 (5th Cir. 2004). Smith's motion raises arguments regarding alleged *Brady* violations and the description of the vehicle involved in the offense. Because all of these arguments were, or could

have been, made before the judgment issued, *see id.*, Petitioner's motion to alter or amend judgment (Dkt. 44) is **DENIED**.

2. Petitioner's request for a certificate of appealability (Dkt. 46) is **DENIED** for the reasons stated in the Court's prior denial (Dkt. 40).

3. Petitioner has filed a motion for leave to proceed *in forma pauperis* on appeal and a certified trust fund account statement (Dkt. 48). Because the motion and supporting documentation indicate that Smith is unable to pay the \$505.00 appellate docketing fee, Petitioner's motion to proceed *in forma pauperis* on appeal (Dkt. 47) is **GRANTED**.

The Clerk will provide a copy of this order to the parties.

SIGNED at Galveston, Texas, this 2nd day of May, 2019.


George C. Hanks Jr.
United States District Judge